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No. 352

In the Supreme Court of the United States

OCTOBER TERM, 1957

LISE HAAS, PETITIONER

v.

ROBERT B. ANDERSON, SECRETARY OF THE TREASURY; AND WHITNEY H. GILLILLAND, PEARL CARTER PACE AND HENRY J. CLAY, CONSTITUTING THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

No opinion was filed by the District Court. The opinion of the Court of Appeals (R. 92–95), which is not yet reported, is set out as the appendix to the petition (Pet. 1a–4a).[1]

JURISDICTION

The judgment of the Court of Appeals was entered on May 16, 1957 (R. 96). The petition for a writ of certiorari was filed on August 8, 1957. The jurisdic-

[1] References to the Record in this Court are designated "R. —"; references to the petition are designated "Pet. —".

tion of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, under the International Claims Settlement Act of 1949, the Foreign Claims Settlement Commission was finally to determine, without court review, claims to share in a fund posted by Yugoslavia pursuant to international agreement.

EXECUTIVE AGREEMENT AND STATUTE INVOLVED

The provisions of the Yugoslav Claims Agreement of 1948, 62 Stat. 2658, *et seq.*, and of the International Claims Settlement Act of 1949, 64 Stat. 12, *et seq.*, 22 U. S. C. 1621–27, are printed in the Record at pp. 9–17 and 75–86, respectively.

STATEMENT

1. The Yugoslav Claims Fund was created by the Yugoslav Claims Agreement of 1948 (R. 9–17). The background and provisions of this Agreement and of the International Claims Settlement Act of 1949, which provided the mechanism for the distribution of the Fund, have been set forth at pp. 3–7 of the Brief for the Respondents in Opposition in *Dayton* v. *Gilliland*, No. 129, this Term, now pending on petition for certiorari.[2] We therefore summarize only those portions of the Agreement and Act which are particularly pertinent to the present case, respectfully referring the Court to the cited pages of the *Dayton* brief for more complete details.

[2] See also Brief for the Respondents, in Opposition in *de Vegvar* v. *Gillilland*, No. 654, O. T. 1955, pp. 2–7, certiorari denied, 350 U. S. 994.

Under the Agreement, Yugoslavia paid to the United States Government $17,000,000 "in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property" occurring between September 1, 1939, and the date of the Agreement (Article 1 (a) and (b); R. 10). Article 3 (R. 11) specifically provided that the "claims of nationals of the United States to which reference is made in Article 1 of this Agreement do not include claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking, which claims shall be subject to compensation by the Government of Yugoslavia, either by direct negotiations between that Government and the respective claimants or under compensation procedures prescribed by the Yugoslav law". The Agreement contemplated that an agency would be "established or otherwise designated by the Government of the United States to adjudicate claims settled under this Agreement * * *" (Article 1 (c)). The United States Government agreed to supply the Yugoslav Government with certified copies of formal submissions made by claimants to the adjudicative agency and corresponding awards, "[i]n the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of this Agreement * * *" (Article 9 (b), R. 15). Article 8 provided that "[a]ny determinations with respect to the validity or amounts of individual claims

which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding" (R. 14). The balance, if any, of the $17,000,000 Fund remaining after adjudication and distribution was to be returned to the Government of Yugoslavia (Article 1 (c), R. 10).

The International Claims Settlement Act of 1949 established what is now the Foreign Claims Settlement Commission and gave it "jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims * * * of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948" or of any similar future agreement (Sec. 4 (a), R. 77). "Nationals of the United States" whose claims were subject to the Act were defined as including "(1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens" (Sec. 2 (c), R. 75). The decisions of the Commission were to "constitute a full and final disposition of the case in which the decision is rendered" (Sec. 4 (b), R. 77–78), and the "action of the Commission in allowing or denying any claim" was to "be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise" (Sec. 4 (h), R. 81).

Section 5 of the Act (R. 81) provided for the transmission to the foreign government concerned of copies

of claims submitted. Section 7 (f) (R. 84) declared that "nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government."

2. Petitioner, not an awardholder but one of the 678 claimants whose claims before the Commission were denied, instituted the instant action against the Secretary of the Treasury and the members of the Foreign Claims Settlement Commission in their official capacities. The complaint alleged (R. 1–8):

In 1945, the Yugoslav Government confiscated the properties of a Yugoslav corporation known as "Dugaresa" (Par. 6, R. 3). Prior to 1940, one-third of the shares of Dugaresa were owned by Etexco A. G., a Swiss corporation; Etexco, in turn, was wholly owned by European Textile Corporation, an American corporation; and the shares of European Textile Corporation were owned in equal amounts by petitioner and three other persons, Robert Anninger, Victor Anninger, and Ann A. Unger, all "non-Aryans" under the Nazi "Aryan" laws. In order to avoid confiscation of the Dugaresa interest under these laws, European Textile Corporation distributed the stock of Etexco to petitioner and her three co-owners, and they in turn transferred the shares to Edwin A. Binder, an "Aryan" and an American citizen. From 1940 to 1950, when Etexco was dissolved, Binder held the shares in his own name under an agreement specifying that he was to hold the shares and exercise all

powers as a shareholder for the equal benefit of the four transferors (Pars. 6, 7, R. 3).

At the time of the Yugoslav confiscation of Dugaresa in 1945, Binder, the two Anningers, and Mrs. Unger were all citizens of the United States; petitioner, however, was not, and she did not acquire United States citizenship until 1952 (Pars. 2, 8, R. 1, 4). Documents submitted to the Department of State in 1946, 1947, and 1948, including a formal claim for compensation based on the taking of Dugaresa, set forth the interests and citizenship status of Binder, Mrs. Unger, the Anningers, and petitioner (Par. 8, R. 4; see Exhs. 2 and 3, R. 17–36).

Paragraphs 9, 10, and 11 of the complaint consisted largely of petitioner's interpretations of documents attached to the complaint. Paragraph 9 stated that at the time of the negotiation of the Yugoslav Claims Agreement of 1948, the above facts were fully known to the negotiators, who were alleged to have intended to "provide for full settlement of, and full compensation for, the entire Dugaresa claim * * * which was to be considered a United States claim in its entirety." Petitioner's interest "was intended, in the Agreement and in separate documents constituting side agreements to the Agreement, to be a compensable claim" (Par. 9, R. 4). Contemporaneously with the signing of the Agreement, "the United States gave Yugoslavia a release of claims which were specifically considered by the negotiators and were deemed settled and discharged by the Agreement. Specifically enumerated as one of those claims was the claim of Binder, in-

cluding in full the interest of" petitioner (Par. 10, R. 4; see Exh. 4, R. 36–40).

Paragraph 11 of the complaint (R. 4–5) alleged that the Department of State thereafter "advised the Congress of the facts stated in paragraphs 9 and 10," and also advised counsel for petitioner that a proposed amendment to the bill (which became the International Claims Settlement Act of 1949), to make clear that her interest in Dugaresa was to be compensable, "was unnecessary in the light of the history of the negotiation of the Agreement as evidenced by memorandum" (see Exhs. 5–7, R. 41–47). Petitioner, relying upon this representation, refrained from pressing her proposed amendment and so informed the Senate and House committees (Par. 11, R. 5; see Exh. 8, R. 47–48).

The complaint goes on to allege that, following passage of the Act, Binder and the four transferors, jointly and severally, filed a claim with the Commission in the amount of $4,012,500 for the confiscation of their interests in Dugaresa (Par. 12, R. 5). In its Proposed Decision on this claim, the Commission denied that portion of the claim relating to petitioner, solely on the ground of her non-citizenship at the time of confiscation[3] (Par. 14, R. 6; see Exh. 9, R. 49–55).

[3] The Proposed Decision, noting that petitioner "was not a citizen of the United States when the claim was filed" (R. 50), concluded that her claim "was not a claim of a national of the United States at the time of the taking of Dugaresa and was not settled by the Agreement of July 19, 1948, or within the jurisdiction of this Commission" (R. 54). The Commission agreed that "the important point is to ascertain the real intention of the parties (to the Yugoslav Claims Agreement of 1948)"

The Department of State thereafter sent, it is alleged, a letter to the Commission requesting that appropriate consideration be given to statements of three different State Department representatives which were "interpretations of the Agreement as making the Binder-Haas claim eligible for compensation despite the non-citizenship of Haas at the time of confiscation" (Par. 14, R. 6; see Exh. 11, R. 61–62, and Exhs. 6, 6a and 7, R. 45–47). After hearing, the Commission issued its Final Decision on December 30, 1954, affirming the denial of the Binder and Haas claims[4] (Pars. 12, 13, R. 5–6; see Exh. 10, R. 55–61).

(R. 52), and proceeded to deal with the contention, among others, that there was "a specific understanding by the negotiators * * *' that the 'Binder-Haas' claim was to be recognized as part of a claim asserted by Binder on behalf of all four beneficial owners" (R. 52). The Commission held that Binder was not within the class of eligible claimants since his relationship to the true owners of Etexco did not create a juridical person "organized under the laws of the United States, or a constituent state or other political entity thereof", within Article 2 (c) of the Agreement (R. 53). The Commission therefore viewed the claim "as one by the real or beneficial owners of the Etexco shares and not as a claim by Binder on his own behalf" (*ibid.*). The claims of both Binder and petitioner were accordingly denied, and awards in the amount of $178,125 each, plus interest, were made to the Anningers and Unger (R. 54–55).

[4] The Final Decision expressly adopted the Proposed Decision with the exception of an increase in the amount of the awards to the Anningers and Unger (R. 60–61). With respect to petitioner's argument that the Proposed Decision was contrary to the understanding of the negotiators that the Binder-Haas claim was to be covered by the Agreement, the Commission ruled that the letter of July 19, 1948, a "unilateral document", was neither an "agreement" nor evidence of any intention of the negotiators that the claims listed therein be allowed as adjudicated claims (R. 56–57). The Commission pointed to the "reservation to

The complaint alleged that the Final Decision was "erroneous and in conflict with applicable law" because it was "contrary to the Agreement", "contrary to side agreements to the Agreement", and "contrary to the Act"—all of which were alleged to have been intended to include petitioner's claim as eligible for compensation—and further because respondents were estopped to deny petitioner's eligibility (Par. 15, R. 6–7). Alleging that she was unable to obtain compensation from Yugoslavia for her claim "because the claim was settled and released by the United States and is therefore barred", and that she had no adequate remedy at law (Pars. 17–18, R. 7), petitioner demanded the following relief (R. 7–8):

(1) a judgment declaring the Final Decision "to be contrary to law and null and void, and

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this Commission of the free exercise of authority and discretion" contained in the opening proviso of the letter ("Without prejudice to the free exercise of such authority and discretion as may be vested in any agency that may be established or otherwise designated by the Government of the United States to adjudicate claims, * * *"), and also quoted statements of the Acting Legal Adviser of the Department of State before the House Committee on Foreign Affairs stressing that "those claims have in no way been adjudicated * * *" (R. 57). The Commission disposed of petitioner's contention that the Proposed Decision frustrated a congressional intention that her claim be allowed by noting that Congress "was well aware that it could do nothing to modify the Agreement which had already been entered into and was valid without Congressional approval" (R. 56–58). Binder's status was found to be that of a mere agent rather than of a "juridical person" (R. 59). Noting that the Act itself reserved to the Commission the sole responsibility for adjudication of claims, the Commission ruled that nothing in the negotiating history of the Agreement served as a "ground for departure from the traditional policy of our government with respect to the espousal of the claims of non-nationals" (R. 59–60).

that [petitioner's] claim be declared to be eligible for compensation from the Yugoslav Claims Fund";

(2) certification of petitioner's claim "by the Commission or by this Court" to the Secretary of the Treasury for payment in the same amount as the award made to the Anningers and to Unger; and

(3) restraint of the Secretary of the Treasury pending final determination of this action from making payments out of the Yugoslav Claims Fund which would reduce the Fund to an amount less than $228,396.46, the amount of petitioner's claim.

By amendment, petitioner added an allegation that she had "a right, under the Fifth Amendment to the Constitution of the United States, to share in the Yugoslav Claims Fund and for compensation for the settlement and release of her claim" (R. 69).

By its order of January 29, 1957, the District Court dismissed the complaint on the ground that it lacked jurisdiction of the subject matter,[5] relying in its oral ruling upon *de Vegvar* v. *Gillilland*, 228 F. 2d 640 (C. A. D. C.), certiorari denied, 350 U. S. 994 (R. 73–74). On appeal, petitioner again urged, as she had in the District Court, that her claim against Yugoslavia, unlike that of Mrs. de Vegvar, was specifically released by the negotiators of the Yugoslav Claims Agreement, thereby giving rise to a claim

[5] The Court of Appeals has corrected its erroneous statement that "The District Court granted the Government's motion for summary judgment * * *" (R. 93, Pet. 2a) to read "The District Court granted the Government's motion to dismiss the complaint * * *".

against the United States Government for just compensation which could not be cut off by the application to her claim of the nonreviewability provisions of Section 4 (h) of the International Claims Settlement Act without violating her constitutional rights. Respondents contended, *inter alia*, that this attempt to distinguish the *de Vegvar* case was without substance since the Commission had determined, contrary to petitioner's basic premise, that the claim had not in fact been released, a determination which was itself final and unreviewable under Section 4 (h).

In affirming the dismissal, the Court of Appeals apparently adopted the latter view. Noting that this case is "of the same general sort as was presented in *de Vegvar* v. *Gillilland*, * * *", the court held that "[t]he decision of the Commission denying Mrs. Haas' claim is not—under the circumstances—one that we are permitted to review under Section 4 (h) of the International Claims Settlement Act of 1949, as interpreted in *de Vegvar*" (Pet. 2a). The court pointed out that petitioner's argument that her claim had been released by the United States was "contrary to the Commission's conclusion", the correctness of which was irrelevant to the disposition of the case (Pet. 3a). The court specifically declined to decide whether such a release, if there were one, would constitute a "taking"; whether such a taking, if there were one, could or should be compensable from the Yugoslav Claims Fund, in the absence of an award by the Commission; and whether, in any event, the court would be "* * * empowered to set aside the Commission's adverse determination" (Pet. 3a–4a).

The court observed, however, that the Commission appeared to have accorded petitioner procedural due process, and that its conclusion that she was barred from participation in the Fund by her non-citizenship "can hardly be said to be based on an unreasonable construction of the law" (Pet. 2a–3a).

ARGUMENT

Petitioner seeks review of the decision of the court below that Section 4 (h) of the International Claims Settlement Act precludes judicial review of the action of the Foreign Claims Settlement Commission in denying her claim against the Yugoslav Claims Fund. Since the purpose and scope of Section 4 (h) have previously been outlined in the Government's brief in opposition to the petition for certiorari in the *de Vegvar* case (O. T. 1955, No. 654), we respectfully refer the Court to that brief. Here, we will demonstrate that the reviewability of the Commission's denial of petitioner's claim is governed by the same rules as were found applicable in the *de Vegvar* and *Dayton* cases.[6]

1. Petitioner contends that her claim, unlike those of Mrs. deVegvar and Mr. Dayton, was unconditionally released by the United States government on July 19, 1948, by the execution of the Agreement and the transmittal of a contemporaneous letter from the Secretary of State to the Yugoslav Ambassador (Pet. 10–18). Starting from this premise, she argues that her claim

[6] *de Vegvar* v. *Gillilland*, 228 F. 2d 640 (C. A. D. C.), certiorari denied, 350 U. S. 994; *Dayton* v. *Gillilland*, 242 F. 2d 227 (C. A. D. C.), pending on petition for a writ of certiorari, No. 129, this Term.

was property (Pet. 11); that the purported release constituted a taking of property entitling her to just compensation under the Fifth Amendment (Pet. 11–14); and that such right was "transmuted * * * to a right against the [Yugoslav Claims] Fund" (Pet. 15–16). If all these issues were to be decided in her favor, says petitioner, it would then be necessary to interpret Section 4 (h) of the Act so as to permit judicial review (Pet. 17–18). Petitioner asks this Court to pass upon the validity of this chain of argument, in order that it may avoid the necessity for deciding even more subtle and complex constitutional issues which, she intimates, were decided *sub silentio* by the court below.[7]

There is no necessity, however, for reaching or deciding any constitutional issues whatsoever. The Court of Appeals properly disposed of the entire case in deciding the threshold question of its jurisdiction to re-examine the particular Commission determination that petitioner's claim had not in fact been released. The court did not find it necessary to decide

[7] Specifically, petitioner urges the Court to decide two constitutional issues which she concedes to be in doubt: (1) whether there was a compensable "taking" under the Fifth Amendment (Pet. 14), and (2) what rights, if any, are vested in claimants by international claims settlement agreements (Pet. 16). By reviewing and deciding these questions in her favor, says petitioner, the Court may avoid deciding (1) whether congressional failure either to confer jurisdiction to hear cases based upon the purported violation of a constitutional right or to waive sovereign immunity from suit in such cases precludes the vindication of those rights in federal courts (Pet. 17), and (2) whether the Due Process Clause of the Fifth Amendment can give rise, in itself, to a procedural right to judicial review of administrative action (Pet. 18).

whether Section 4 (h) would bar review in any and all circumstances. It was fully aware, contrary to petitioner's intimations (Pet. 18), of the constitutional issues which would be raised if that section were to be read as precluding judicial vindication of constitutional rights.* But it did not find those issues to be properly present in this case, specifically declining to pass upon any of the petitioner's contentions based upon the purported release (including the question of whether there had in fact been a release); it prefaced this refusal by pointing out that the Commission had decided that petitioner's claim had not been released by the United States (Pet. 3a). The court thereby accepted respondent's argument, previously outlined (*supra*, p. 11), that the Commission's determination—"final and binding" upon all parties under Article 8 of the Agreement (R. 14), and not subject to judicial review under the provisions of the Act—obviated the possibility of judicial consideration of the constitutional issues which petitioner says would be raised by the assumption that her

* In a case argued before the same panel on the same day as petitioner's appeal and decided June 27, 1957, Judge Washington, again speaking for himself and Chief Judge Edgerton, stated as follows (*American & European Agencies, Inc.* v. *Gilliland*, (C. A. D. C.), slip opinion, pp. 4–5):

"If the agency's [action] resulted in the denial of a constitutional right, the validity of a blanket nonreviewability clause would indeed pose a grave and difficult constitutional question. On the other hand, if the agency's [action] does not result in the denial of a constitutional right, there is no constitutional reason for seeking to narrow the scope of a nonreviewability statute."

claim had been released. This disposition of the case was clearly correct.

(*a*). First, this holding correctly interprets the Commission's statement "that the claim of Lise Haas * * * was not settled by the Agreement of July 19, 1948", as a ruling that the Agreement and the contemporaneous letter did not operate as an unconditional discharge of Yugoslavia's obligations to petitioner. Under the Agreement, made "in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia" (Article 1 (a), R. 10), claims "settled" and claims "discharged" were clearly one and the same. Consequently, a claim which was not "settled" was similarly not "discharged"—or "released", in petitioner's terminology.[9] Since petitioner relies upon the words "settled and discharged" (R. 37) in the letter of July 19, 1948 (R. 37–40) as effecting a release, the Commission's ruling that the claim "was not settled by the Agreement" was, as the court below held, a determination that the claim had not been released.[10]

(*b*). Second, the decision below correctly construes Section 4 (h) of the Act as precluding judicial review

[9] Black's Law Dictionary, 4th Ed. (1951), contains the following definition: "Discharge. To release, * * *".

[10] The Senate Report accompanying the bill which became the International Claims Settlement Act of 1949 noted (S. Rept. 800, 81st Cong., 1st Sess., p. 11; emphasis added):

"The Yugoslav claims agreement of 1948 is a settlement of a defined category of claims. In consideration of the payment of $17,000,000 the Yugoslav Government was discharged of obligation with respect to such claims. *Claims not settled were not discharged* and remain unsettled obligations of Yugoslavia."

of this determination by the Commission. That section makes "[t]he action of the Commission in allowing or denying any claim * * * final and conclusive on *all* questions of law and fact and not subject to review * * * by any court by mandamus or otherwise" (R. 81; emphasis added). Petitioner has suggested no reason why this provision should not apply to the determination in question, and there is none. This binding determination, unreviewable in the courts, is dispositive of petitioner's contentions. See the Briefs for the Respondents in Opposition in the *De Vegvar* and *Dayton* cases (*supra*, pp. 2, 12).[11]

2. Even if the Court of Appeals had assumed jurisdiction to reconsider the question of whether a release had been effected, it would have been necessary to af-

[11] This Court must, of course, assume that Yugoslavia will consider itself bound, under Article 8 of the Agreement, by the determination that its obligations to petitioner were not released. Petitioner has nowhere suggested that Yugoslavia has rejected this determination. The relationship between Article 8 of the Agreement and Section 4 (h) of the Act and the binding force of those provisions was explained as follows by the State Department spokesman during hearings on the bill (Hearings before the House Committee on Foreign Affairs on H. R. 4406, 81st Cong., 1st Sess., p. 22):

"* * * A decision made by the Commission shall be a full and final disposition of the case. That is consistent with the terms of the Yugoslav Agreement under which Yugoslavia agreed that any determination of the Commission would also be final and binding upon the Yugoslav Government.

Mrs. DOUGLAS. In other words, once the Commission has given a decision, there is no appeal. That is the end of the matter?

Mr. HERMAN. That is right.

Mrs. DOUGLAS. Neither the State Department nor the Congress nor anybody else can set aside a decision of the Commission?

Mr. HERMAN. That is precisely so."

firm the Commission's determination. Passing over the question of whether the United States Government could in any event effect the release of a claim of an Austrian citizen (R. 41) against the Yugoslav Government, it is manifest that petitioner's contention that her claim was released flies in the face of the Agreement. The Agreement, although it effected the over-all "settlement and discharge" of claims of American nationals against Yugoslavia (Article 1 (a)), did not effect the settlement or release of any *individual* claim until the claim was "determined to be valid" by an "adjudication made by the agency established or otherwise designated by the Government of the United States to *adjudicate* claims *settled* under [the] Agreement * * *" (Article 1 (c), R. 10; emphasis added). This is particularly true with reference to claims such as petitioner's in which nationality was a factor, since Article 3 specifically provided that the claims settled and discharged under Article 1 did "not include claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking, *which claims shall be subject to compensation by the Government of Yugoslavia* * * *" (R. 11; emphasis added). The claim of petitioner, an alien until 1952, has never been "determined to be valid" by a Commission adjudication and has therefore never been released under the Agreement.

Petitioner's reliance upon the letter of July 19, 1948 (R. 36–40) as a "corollary agreement" altering the main Agreement and effecting the immediate dis-

charge and release of a limited group of listed claims (Pet. 6–7 and fn. 11, Pet. 19) is misplaced.[12] The letter states that the listed claims were considered during the negotiations and that the United States Government understood that the obligations of the Yugoslav Government with respect to such claims had been "forever ful'y settled and discharged * * * by reason of" the Agreement (R. 36–37). But immediately thereafter is the following proviso (R. 37):

> * * * provided, however, that nothing herein is intended to mean or shall be construed as meaning that other claims in addition to those hereafter listed, are not similarly and forever fully settled and discharged * * * by reason of the aforesaid agreement, it being expressly understood that the following list is partial only * * *.

All claims, listed or unlisted, therefore remained on the same footing. The mere listing of a claim could not serve as an *unconditional* discharge of Yugoslavia's obligations to the claimant, contrary to the terms of the Agreement itself. Discharge still awaited the determination of the adjudicative body that the claim was valid. This is evidenced by the opening words of the letter reserving the complete "authority and discretion" of the adjudicative agency[13] (R 36; see also fn. 4, *supra*, pp. 8–9).

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[12] The only other claimant named in the "letter-release" which is seeking review of the disposition of its claim is American & European Agencies, Inc., which does not rest its claim in any way upon that document.

[13] The real purpose of the letter was apparently to furnish Yugoslavia with a list of major claimants who had elected to assert their claims through the United States Department of

3. Petitioner's own actions furnish another basis for rejecting her attempt to obtain review on the ground that the purported release of her claim gives rise to constitutional issues.

(*a*). This Court long ago ruled that one who "submit[s] his claims to the Department of State for that protection which his government might think proper to grant * * * [and] invoke[s] the aid of the United States in collecting his claims * * *" has no standing thereafter to contend that the United States had no power to release the foreign government from its obligations "except upon the condition of making him just compensation for his claims." *Meade* v. *United States*, 76 U. S. 691, 724.[14] See also Borchard, *Diplomatic Protection of Citizens Abroad* (1915), pp. 357–358, 366, 373.

(*b*). In submitting her claim to the Commission for determination and seeking satisfaction from the Fund, petitioner acquiesced in the conditions which attached to the creation of the Fund and the Com-

State. Armed with this letter, Yugoslavia could validly refuse to consider these same claims in similar settlements it was at that time negotiating with other countries. See Hearings before the House Committee on Foreign Affairs on H. R. 4406, 81st Cong., 1st Sess., pp. 65–70. The letter thus served, in effect, as the first of the communications under Article 9 (b) of the Agreement (R. 15) and Section 5 of the Act (R. 81) calling for the transmission of copies of claims filed "in the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of" the Agreement (R. 15).

[14] Petitioner concedes that she "requested the United States to espouse her claim and thereby consented to its compromise, as in *Meade* v. *United States* * * *." Pet. 16.

mission.[15] Cf. *Wall* v. *Parrot Silver & Copper Co.*, 244 U. S. 407, 411–412, and cases cited. These include the finality and non-reviewability provisions of both the Agreement and the Act (Article 8, R. 14; Section 4 (b) and (h), R. 78, 81). In addition, they include the express statutory denial of the liability which petitioner asserts (Section 7 (f), R. 84):

> Nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.[16]

Having chosen to look to the Fund, petitioner "must claim solely by virtue of [her] interest in the Fund created by the statute and under its terms [she is] not entitled to complain * * *." *Z. & F. Assets Corp.* v.

[15] Paradoxically, petitioner is compelled to argue that her "general just compensation right has been transmuted, by her own actions, to a right against the Fund" (Pet. 16), since what she specifically seeks in this action is review of the denial of her claim against the Fund, and not the general vindication of her claimed right to compensation. If she did not make this argument, there would be no force to her contention that her asserted constitutional right to just compensation would be destroyed by failing to permit review of the Commission determination, since other remedies would presumably be available (see Pet. 16). But as we point out in the text, petitioner thus falls between two stools—her concession that she has limited her claim to one against the Fund constitutes acceptance of the finality of the Commission's decision.

[16] Although this section applies in terms only to the claims of a "national of the United States," it would seem to apply *a fortiori* to petitioner during the period of her alienage.

Hull, 311 U. S. 470, 489; *Dayton* v. *Gillilland*, *supra*, 242 F. 2d at 228.

4. Putting aside her constitutional arguments, petitioner asserts a right to judicial review based on the Act itself—despite the unequivocal statutory provisions precluding such review. She argues that the negotiators intended her claim to be compensable, that this intent was embodied in the Agreement, and that the denial of her claim therefore violated both the Agreement and the statutory provisions requiring that the Commission apply "the provisions of the applicable claims agreement" and "the applicable principles of international law, justice, and equity" (Section 4 (a), R. 77; see Pet. 3, 18–25). Petitioner concludes that the Commission thereby exceeded its jurisdiction, rendering its decision amenable to judicial review.[17]

This attempt to evade the bar of the statute by the familiar device of characterizing the issues she raises as "jurisdictional", and of a type which, in some manner independent of the Act, give her a right to review, is unavailing. Cf. *Butte, A. & P. Ry. Co.* v. *United States*, 290 U. S. 127, 141–142; see also Brief for the Respondents in Opposition in *de Vegvar*, O. T. 1955, No. 654. If the Commission erred in deciding any of the issues in petitioner's case, it did so not in excess, but in the proper exercise, of its jurisdiction "to adjudicate claims settled under this Agreement * * *" (Article 1 (c), R. 10) and "to receive,

[17] This is identical to the argument made by Mrs. de Vegvar in her petition for certiorari. See the Petition in No. 654, O. T. 1955.

examine, adjudicate, and render final decisions with respect to claims * * *" (Section 4 (a), R. 77). This jurisdiction included, of course, jurisdiction to interpret and apply the Agreement to the best of the Commission's ability and in the light of its expert knowledge.[18] Under Section 4 (h) of the Act, the Commission's interpretations of the Agreement—constituting determinations of "questions of law"— are "final and conclusive" and not subject to judicial review.[19]

5. As in the *de Vegvar* and *Dayton* cases, the courts below found it necessary to decide only the threshold issue of reviewability in this case. But as we noted in those cases, other obstacles to the petitioner's ultimate success are likewise present and call for affirmance of the decision below. See Briefs for the Respondents in Opposition in No. 654, O. T. 1955 (pp. 23–25) and No. 129, this Term (pp. 19–20).

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[18] Speaking of Section 4 (a), the Report of the Senate Committee on Foreign Relations states (S. Rept. 800, 81st. Cong., 1st Sess., p. 9):

"The Commission is directed to apply the terms of the applicable agreement. Such application may require, in given cases, interpretation and construction of the meaning and intent of language used."

[19] Petitioner cites *Z. & F. Assets Corp.* v. *Hull*, *supra*, pp. 20–21, as authority for her argument that the statute permits review. But in that case the Court declined to review, despite the absence of any express statutory provision precluding judicial review of Commission action.

CONCLUSION

The decision of the court below is clearly correct and is not in conflict with any other decision. The questions decided are not now of general importance. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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